

DEC 17 1997

Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

ORIGINAL

In the Matter of)
)
)

Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)
_____)

MM Docket No. 87-268

TO: The Commission

**DISPATCH BROADCAST GROUP'S
LIMITED OPPOSITION TO THE EX PARTE SUBMISSION OF THE
ASSOCIATION FOR MAXIMUM SERVICE BROADCASTERS, INC., ET. AL.**

The Dispatch Broadcast Group ("Dispatch"), by its attorneys, hereby files this Limited Opposition to the Ex Parte Submission and accompanying "Improvements to the DTV Table" submitted by the Association for Maximum Service Television, Inc. and other broadcasters (collectively "MSTV").¹ By this Opposition, Dispatch objects only to that portion of the so-called Improvements proposing to assign DTV channel 21 in Columbus, Ohio to WCMH(TV) rather than WBNS-TV, Dispatch's commonly owned station operating on NTSC channel 10. As demonstrated more fully below, MSTV's last-minute proposed assignment of channel 21 to WCMH is contrary to Dispatch's timely

¹ See Ex Parte Submission Based On New Technical Discoveries To Help The Commission Improve The DTV Table Of Allotments/Assignments Submitted By The Association For Maximum Service Television, Inc. And Other Broadcasters ("MSTV Ex Parte Submission"), filed November 20, 1997. The MSTV Ex Parte Submission was placed on public notice on December 2, 1997 by the Chief of the Office of Engineering and Technology.

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filed Supplemental Petition for Reconsideration which demonstrated that channel 21 was a significant improvement to WBNS-TV's current DTV assignment on channel 11.

Dispatch applauds the Commission for its efforts to date in trying to streamline and minimize the over-the-air industry's transition to a digital world. Dispatch is fully committed to the early provision of DTV service to its viewers in Columbus. WBNS-TV, Inc., licensee of WBNS, has received experimental authority to provide low power DTV service in Columbus (FCC File No. BPEXT-970225KE) and is currently finalizing plans to commence this service.

Dispatch is also prepared to begin providing full-power DTV service to Columbus from its permanent DTV channel no later than November 1998, the date the so-called early adopters have proposed to commence DTV service across the country. The principal obstacle to this early provision of full power DTV service in Columbus is Dispatch's inability to finalize the purchase of a DTV transmitter due to uncertainty over WBNS-TV's DTV channel assignment. Because Dispatch demonstrated that DTV channel 21 is a better match of WBNS-TV's current NTSC service area while, at the same time, reducing overall interference to other NTSC and DTV service in the area (as compared to its current DTV assignment), Dispatch urges the Commission to reject

MSTV's last-minute proposal to the contrary and change WBNS-TV's DTV assignment to channel 21.

BACKGROUND

On June 13, 1997, Dispatch timely filed a Petition for Partial Reconsideration of the FCC's Sixth Report & Order highlighting a flaw in the Commission's DTV model.² Specifically, Dispatch demonstrated that the FCC's planning factors failed to credit high-band VHF stations (like WBNS-TV) for their actual NTSC service areas and urged the Commission to correct this error to avoid disenfranchising WBNS-TV's current NTSC viewers. Dispatch also reserved the right to supplement its Petition for Reconsideration following the release of OET Bulletin No. 69.

Following the release of OET 69, Dispatch timely filed a supplement to its Petition for Partial Reconsideration.³ This filing, which was specifically permitted by the Chief of the Office of Engineering & Technology, (see Order, DA 97-1377, MM Docket No. 87-268, released July 2, 1997), sought to change WBNS-

² See Dispatch Broadcast Group's Petition for Partial Reconsideration of the Sixth Report & Order, filed June 13, 1997.

³ Supplement to Dispatch Broadcast Group's Petition for Partial Reconsideration of the Sixth Report & Order, filed August 22, 1997.

TV's DTV assignment from channel 11 to channel 21. In support of its Supplement, Dispatch submitted an Engineering Statement that showed DTV channel 21 more closely replicated WBNS-TV's actual NTSC service area while actually causing less predicted interference to other DTV and NTSC assignments than its DTV channel 11 assignment. See Engineering Statement of Cohen, Dippell & Everist (attached to Dispatch's Supplement).

Cosmos Broadcasting Corporation, licensee of WTOL(TV), NTSC Channel 11, Toledo, Ohio, filed Comments in Support of Dispatch's Supplement.⁴ In particular, Cosmos recognized that the proposed assignment of DTV channel 21 to WBNS would cause less predicted interference to other DTV and NTSC assignments than WBNS-TV's current DTV channel 11 assignment.⁵

No other station in the Columbus, Ohio market, including WCMH, filed a Petition for Reconsideration or Supplement seeking to change their DTV assignment to channel 21. WCMH's ultimate parent, National Broadcasting Company ("NBC"), did file a Petition for Clarification and Partial Reconsideration of the Fifth and Sixth Reports and Orders.⁶ In that filing, NBC

⁴ Comments in Support of Supplement to Petition for Reconsideration filed by Cosmos Broadcasting Corporation, dated September 23, 1997.

⁵ See Cosmos Comments at 2.

⁶ Petition for Clarification and Partial Reconsideration filed
(continued...)

indicated that it had "conducted its own engineering analysis of the [FCC's DTV] [table]" and identified specific concerns with regard to certain DTV assignments for its owned and operated stations.⁷ While NBC's Petition noted its concerns, or potential concerns, about the DTV assignments of its stations in Los Angeles, San Diego, New York, Philadelphia and Miami, its Petition did not lodge an objection to the FCC's DTV assignment of channel 14 for WCMH, its station in Columbus.

This omission is not at all surprising given that Exhibit 1B to MSTV's Ex Parte filing, which purports to show the FCC's DTV Table with corrected coverage and interference figures, shows that WCMH's DTV assignment achieves a 99.8 percent match of its NTSC service area. Moreover, according to the FCC's records, NBC did not file a Supplement to its Petition for Partial Reconsideration and Clarification following the release of OET Bulletin No. 69, despite the fact that OET specifically permitted all broadcasters to do so.

⁶ (...continued)
by National Broadcasting Company, Inc. ("NBC"), dated June 13, 1997.

⁷ NBC Petition at 2, 2-4.

**THE COMMISSION SHOULD NOT ASSIGN
DTV CHANNEL 21 TO NBC IN COLUMBUS**

Given this factual background, Dispatch submits it would be arbitrary and capricious to assign DTV channel 21 in Columbus to NBC based on MSTV's last-minute Ex Parte Submission. Dispatch, not NBC, timely filed a Petition for Reconsideration and Supplement objecting to its DTV assignment in Columbus. Dispatch, not NBC, specifically proved that DTV channel 21 was an improvement to the FCC's DTV allocations in and around Columbus, Ohio. Indeed, awarding DTV channel 21 in Columbus to NBC at this late date would represent the height of arbitrariness given that NBC has never objected to WCMH's current DTV assignment and did not join in MSTV's Ex Parte Submission to the Commission.⁸

Dispatch also objects to MSTV's proposed assignment of channel 21 to NBC in Columbus because it is inconsistent with MSTV's submissions to the Commission in this proceeding. First, the MSTV Ex Parte filing was submitted to correct two "systemic problems" with the FCC's DTV table: (i) DTV-to-DTV channel interference and (ii) assignments in the so-called Acute Problem Areas that will, according to MSTV, "deprive millions of people of existing and new television service." MSTV Ex Parte Filing at

⁸ NBC did not join in the MSTV Ex Parte Submission despite the fact that it had every opportunity to do so and had joined in each of the earlier joint submissions by MSTV and the so-called Broadcasters Caucus.

3. The proposed change in WCMH's assignment is not necessitated by either of these two systemic problems. There is no DTV-DTV adjacent channel interference problem with WCMH's current DTV assignment. As noted above, MSTV's correction of the coverage calculations contained in the FCC's DTV table shows that the current DTV channel 14 assignment to WCMH will replicate 99.8 percent of WCMH's NTSC service area. Moreover, the Columbus, Ohio market is not in one of the so-called Acute Problem Areas and the change to the WCMH DTV assignment is not necessary to accommodate a change made in one of those areas.

Second, to the extent the change was proposed because the WCMH DTV channel 14 assignment could receive or cause interference to co-channel or adjacent channel Land Mobile operations in the Columbus area, Dispatch submits that the proposed change should be rejected. No reason has been offered as to why NBC itself could not have noted this problem (to the extent one exists) in its own timely-filed Petition for Partial Reconsideration or Supplement -- filings that were due at the Commission a minimum of 4 months ago.

Additionally, in its Petition for Clarification and Partial Reconsideration of the Fifth and Sixth Reports and Orders (a pleading joined by NBC and Dispatch), MSTV urged the Commission to relax its minimum co-channel spacing requirement of

250 Km for Land Mobile operations and DTV allotments. MSTV specifically argued that "a minimum co-channel spacing of 240 Km or less is sufficient to protect Land Mobile and DTV operations when combined with tailored engineering to protect Land Mobile Operations in the congested markets."⁹ Given MSTV's suggestion that the Commission should revise its DTV table to include more short-spaced DTV-Land Mobile co-channel assignments, Dispatch is at a loss to understand any potential last-minute concerns about a co-channel Land Mobile DTV assignment already in the FCC's DTV table.

CONCLUSION

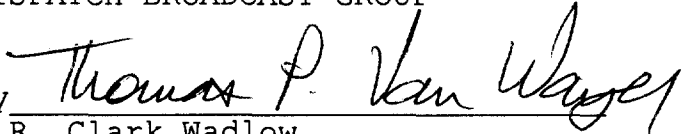
For all these reasons, Dispatch urges the Commission to reject MSTV's Table of Improvements to the extent it proposes to assign DTV channel 21 in Columbus to NBC's WCMH rather than WBNS. No valid reason exists to accept MSTV's eleventh hour submission given Dispatch's earlier, timely-filed Supplement requesting DTV channel 21 for WBNS (which was supported by Cosmos Broadcasting) and the fact that NBC itself has never even requested a change to WCMH's DTV assignment.

⁹ Petition for Clarification and Partial Reconsideration of the Fifth and Sixth Reports & Orders submitted by MSTV, The Broadcasters Caucus and Other Broadcasters at 19, dated June 13, 1997.

Dispatch is fully prepared to provide DTV service to its current NTSC viewers in Columbus no later than the early adoption date of November 1998. To be able to provide this DTV service, however, it needs to order a transmitter now on a channel that will most closely replicate its current NTSC coverage. Accordingly, Dispatch respectfully requests that the FCC reject MSTV's proposal to the contrary and assign DTV channel 21 to WBNS-TV in Columbus, Ohio.

Respectfully submitted,

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